

- 3.) The reference year used in the calculation of allowable exceedance days.

The TMDL went into effect on July 15, 2003. As noted in Resolution No. 2002-022 above, the reopener was supposed to have taken place within 4 years after the effective date of the TMDL (i.e. by July 15, 2007). (Regional Board Resolution No. 2002-022, p. 6, Attachment B to Resolution No. 2002-022.) To date, however, no reopener has occurred.

In preparation for the Regional Board's pending reopener, various responsible agencies have been collecting data in order to document and characterize the existing conditions and sources of bacteria contained in the Santa Monica Bay. In many cases, that information directly contradicts previously held beliefs regarding the natural, background levels of bacteria and the efficacy of the Regional Board's chosen monitoring sites and reference points. It is inappropriate for the Regional Board to issue an Order and NOV based on the current, inaccurate TMDL parameters. Instead, the Regional Board should address these alleged violations only after it has conducted its reopener, re-evaluated its current TMDL, and devised an accurate regulatory mechanism that takes into account all current information regarding beach conditions. Petitioner requests that the State Board set aside the Order and NOV for this reason.

H. THE MONITORING REQUIRED BY THE ORDER MODIFIES THE MS4 PERMIT WITHOUT A NOTICED HEARING

The MS4 Permit contains a monitoring program (Monitoring and Reporting Program No. CI 6948) that was incorporated into the permit at the time of its adoption on December 13, 2001. This monitoring program is very detailed and requires, inter alia, mass emissions, water column toxicity, tributary, and other monitoring for a variety of constituents and over a detailed timeline.

The MS4 Permit is both a NPDES permit and waste discharge requirement ("WDR") issued by the Regional Board under the Porter-Cologne Act (see Water Code §§ 13370-13389). A NPDES permit and WDR cannot be issued or modified except through prior notice and hearing. Water Code § 13378. The Act further provides that only a Regional Board can modify a WDR, and that this function cannot be delegated to the executive officer. Water Code § 13223(a) ("Each regional board may delegate any of its powers and duties vested in it by [the Porter-Cologne Act] excepting only the following: . . . (2) the issuance, modification, or revocation of any water quality control plan, water quality objectives, or waste discharge requirement.")

The Order essentially creates a massive new addition to the MS4 monitoring program. The Order requires Petitioner to provide information on the sources of exceedances at each of the shoreline monitoring sites for which it is jointly responsible, provide details regarding dry weather discharge from the MS4 at each site, and evaluate the sources of exceedances, both upstream and in the proximity of the monitoring site.

The Order, however, was issued without notice and a public hearing. To the extent the Order requires Petitioner to expand its monitoring efforts, the Order constitutes a modification to the MS4 Permit without notice and hearing.

I. THE NOV AND ORDER UNLAWFULLY IMPOSES ON PETITIONERS RESPONSIBILITY FOR THE DISCHARGES OF OTHERS

The Order is based on the allegation that Petitioner is jointly responsible for the alleged exceedances. To the contrary, Petitioner is not responsible for the discharges of others and neither the Clean Water Act or the Porter-Cologne Act so provides. Petitioner is responsible solely for its own discharges.

J. TECHNICAL DEFECTS

Petitioner has requested that the Petition be placed in abeyance while we attempt to reach an amicable resolution with the Regional Board. Towards that effort, we are continuing to investigate and collect data related to the matters raised in the NOV and Order. At this time, the City is aware of the following discrepancies in the documents that giving rise to this Petition.

Petitioner challenges the RWQCB staff's determination that Rolling Hills has contributed to violations of the Receiving Waters Limitations under Part 2.5 of the MS4 Permit. It has been and continues to be the City's policy to endeavor to comply fully with the provisions of the MS4 Permit.

The City contends that the exceedances of bacteriological indicators which are the subject of the identified violations were not associated with MS4 discharges that are the responsibility of the City of Rolling Hills. As shown in Exhibit "C" which has been constructed based on topographic delineation and County Storm Drain GIS information, land area within the City of Rolling Hills draining to the Santa Monica Bay does not contribute runoff via storm drains that outfall in the vicinity of monitoring location SMB 7-7 under the Santa Monica Bay Beaches Bacterial TMDLs Coordinated Shoreline Monitoring Plan dated April 7, 2004. Therefore, the City does not believe it has violated Part 2.5 of the MS4 Permit whereby discharges from the Municipal Separate Storm Sewer System (MS4) during Summer Dry Weather are prohibited if they cause or contribute to exceedances of bacterial objectives for Santa Monica Bay Beaches.

Additionally, staff of the Sanitation Districts of Los Angeles County who are responsible for conducting the coordinated shoreline monitoring for Jurisdictional Group 7 have raised additional concerns with RWQCB staff with respect to geometric mean calculations for NOVs issued to Jurisdictional Group 7 agencies, among them that in some instances the geometric mean values were calculated using only three data points which is not in conformance with the Water Quality Objectives in the Basin Plan which states that "the geometric mean values should be calculated based on a statistically sufficient number of samples (generally not less than 5 samples equally spaced over a 30-day period)."

Accordingly, the NOV and Order was not supported by substantial evidence. We anticipate that as the investigation continues, Petitioner may discover additional discrepancies or information that may give rise to additional legal issues that will be appropriate for review. City reserves its right to supplement this Petition in the event the investigation uncovers additional information relevant to these matters.

CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that the issuance of the subject NOV and Order was improper, inappropriate, unlawful, and not supported by substantial evidence. Petitioner respectfully requests that the State Board grant this petition and review the Regional Board's action in issuing the NOV and Order.

REQUEST TO HOLD PETITION IN ABEYANCE

Pursuant to 23 Cal. Code Regs. §2050.5, petitioner respectfully requests that this Petition be held in abeyance while the petitioner pursues resolution of this matter with the Regional Board.

Dated: April 3, 2008

Respectfully submitted,
CITY OF ROLLING HILLS



By: MICHAEL JENKINS
LAUREN B. FELDMAN
JENKINS & HOGIN, LLP
Attorneys for Petitioner,
CITY OF ROLLING HILLS

Appendix:

Exhibit A: Notice of Violation

Exhibit B: Order

Exhibit C: Regional Drainage of Rolling Hills

EXHIBIT "A"

**NOTICE OF VIOLATION (ORDER NO 01-182 AS AMENDED BY
ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042,
NPDES PERMIT NO. CAS004001, WDID4B190202001)**



California Regional Water Quality Control Board

Los Angeles Region



Linda S. Adams
Agency Secretary

Recipient of the 2001 Environmental Leadership Award from Keep California Beautiful

320 W. 4th Street, Suite 200, Los Angeles, California 90013
Phone (213) 576-6600 FAX (213) 576-6640 - Internet Address: <http://www.waterboards.ca.gov/losangeles>

Arnold Schwarzenegger
Governor

March 4, 2008

Mr. Anton Dahlerbruch
City Manager
City of Rolling Hills
2 Portuguese Bend Road
Rolling Hills, CA 90274-5199

VIA CERTIFIED MAIL

NOTICE OF VIOLATION (ORDER NO. 01-182 AS AMENDED BY ORDER NO. R4-2006-0074 AND ORDER NO. R4-2007-0042, NPDES PERMIT NO. CAS004001, WIDID 4B190202001)

Dear Mr. Dahlerbruch:

The California Regional Water Quality Control Board, Los Angeles Region (Regional Board) is the state regulatory agency responsible for protecting water quality in Los Angeles and Ventura Counties. To accomplish this, the Regional Board issues permits under the National Pollutant Discharge Elimination System (NPDES) as authorized by the federal Clean Water Act. On December 13, 2001, this Regional Board adopted the Los Angeles County Municipal Separate Storm Sewer System Permit, NPDES Permit No. CAS004001, Order No. 01-182 (LA MS4 Permit), under which the City of Rolling Hills is a Permittee.

BACKGROUND

The LA MS4 Permit includes Discharge Prohibitions, Receiving Water Limitations, and a Monitoring and Reporting Program, among other requirements. Under Part 1, Discharge Prohibitions, the LA MS4 Permit requires that the Permittees "effectively prohibit non-storm water discharges into the MS4 [municipal separate storm sewer system] and watercourses," except under limited circumstances, as specified in Part 1. Under Part 2, Receiving Water Limitations, the LA MS4 Permit prohibits "discharges from the MS4 that cause or contribute to the violation of Water Quality Standards or water quality objectives."

The LA MS4 Permit was subsequently amended on September 14, 2006 by Order No. R4-2006-0074 and on August 9, 2007 by Order No. R4-2007-0042 to implement the summer dry weather waste load allocations established in the Santa Monica Bay Beaches Bacteria Dry Weather Total Maximum Daily Load (TMDL) and the Marina del Rey Harbor Mothers' Beach and Back Basins Bacteria TMDL. The summer dry weather requirements were incorporated in the LA MS4 Permit as specific Receiving Water Limitations (RWLs) for fecal indicator bacteria in Parts 2.5 and 2.6, and a supporting specific prohibition on discharges from the MS4 that cause or contribute to exceedances of the bacteria RWLs.

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The Permittees collectively discharge urban runoff and storm water from the MS4 to the Santa Monica Bay, a navigable water of the United States, under the provisions and requirements of the LA MS4 Permit. These discharges, as demonstrated via shoreline water quality monitoring, contain total coliform, fecal coliform, enterococcus and other pollutants, which degrade water quality and impact beneficial uses of the receiving waters at beaches along Santa Monica Bay. These bacterial indicators are defined as wastes under the California Water Code (CWC § 13000 et seq.).

VIOLATIONS OF RECEIVING WATER LIMITATIONS

The City of Rolling Hills is hereby notified that technical staff has concluded that Rolling Hills is in violation of waste discharge requirements established in Board Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042, and has therefore violated CWC § 13376, and is subject to liability pursuant to CWC § 13385.

The data submitted in the Permittees' shoreline monitoring reports for the summer dry weather compliance periods, beginning on September 14, 2006 through October 31, 2006 and April 1, 2007 through October 31, 2007, reveal violations of the RWLs set forth in Part 2.5 of Order No. 01-182 as amended by Order No. R4-2006-0074 and Order No. R4-2007-0042. These violations occurred at one shoreline monitoring site located along Santa Monica Bay beaches to which the City of Rolling Hills discharges via the MS4, on 9 days, which included 9 instances where the bacteria water quality objectives set to protect water contact recreation were exceeded. These violations are summarized in Table 1, detailed in the attachment, and incorporated herein by reference. The City of Rolling Hills is jointly responsible for violations at this monitoring site along with the other Permittees with land area within the watershed draining to this site.

CIVIL LIABILITY

Pursuant to CWC § 13385, the City of Rolling Hills is subject to penalties of up to \$10,000 for each day in which a violation of RWLs occurs. These civil liabilities may be assessed by the Regional Board beginning with the date that the violations first occurred, and without further warning. The Regional Board may also request that the State Attorney General seek judicially imposed civil liabilities of up to \$25,000 for each day in which a violation occurs, or injunctive relief, pursuant to CWC §§ 13385 and 13386. The City of Rolling Hills may also be subject to penalties pursuant to other sections, and other forms of enforcement proceedings, in addition to those described above.

To ensure that the causes of the violations are identified and abated, enclosed herewith, please find an Order directing the City of Rolling Hills to submit a variety of reports pursuant to CWC § 13383. Specifically, these reports shall provide an evaluation and documentation of the causes of these violations, remedial actions to date, and the City's plans for additional corrective and preventative actions to bring discharges from the MS4 into prompt compliance with the bacteria RWLs applicable to the Santa Monica Bay.

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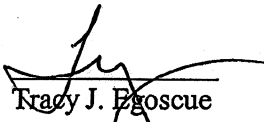


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March 4, 2008

If you have any questions regarding this matter, please contact me at (213) 576-6605, or alternatively, your staff may contact Mr. Carlos Urrunaga at (213) 620-2083.

Sincerely,


Tracy J. Egoscue
Executive Officer

Enclosures: Table 1
Attachment 39
Order Pursuant to California Water Code Section 13383, dated March 4, 2008

cc: Ms. Yolanta Schwartz, Director of Planning, Rolling Hills
Mr. Michael Levy, Office of Chief Counsel, State Water Resources Control Board
Mr. Bruce Fujimoto, Storm Water Section, State Water Resources Control Board
Mr. Eugene Bromley, U.S. EPA, Region 9

California Environmental Protection Agency



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TABLE 1

**ROLLING HILLS
SUMMARY OF VIOLATIONS OF BACTERIA
RECEIVING WATER LIMITATIONS FOR SUMMER DRY WEATHER
ORDER NO. 01-182 AS AMENDED BY ORDERS R4-2006-0074 AND R4-2007-0042**

Site ID	Single Sample RWL Violations				30-day Geometric Mean RWL Violations			Total RWL Violations by Site	Total Days of Violations by Site
	Total Coliform	Fecal Coliform	Enterococcus	Total Coliform (Fecal:Total Coliform Ratio > 0.1)	Total Coliform	Fecal Coliform	Enterococcus		
SMB 7-07	0	0	4	0	0	0	5	9	9